rule in the Louisiana Code, nor, so far as can be ascertained, in the Spanish or French laws. In Scotland an insult is actionable, and yet it is firmly established that verbal injury is not a justification for assault, going only to the mitigation of damages. Bell's Principles §§ 2032, 2043. In the Roman Law an insult was an actionable injury, but it was a question upon which there was a conflict of opinion, if an insult in return, although of like nature, did not subject the second person to an action as well as the first, Ayliff's New Pandect 595, and it is elsewhere laid down that a person was free from liability for an assault, only when he could not otherwise defend himself. Dig. IX. 2. 45. It seems clear, therefore, that the doctrine of Louisiana is a product indigenous to that state, in conflict with all developed systems of law.

A possible explanation may be found in the legal history of the state. At the time of the cession of Louisiana to the United States, four distinct bodies of Spanish civil law were in force in the territory. These were abrogated in 1808 in so far as inconsistent with the Civil code then adopted, but were not entirely repealed until 1828. Even since this date, the old Spanish law has necessarily played an important part as the natural basis of that extensive interpretation required by the generality of expression in the Code. See 22 Am. Law. Rev. 890–902. It was not strange, therefore, in view of the early scarcity of copies of the Spanish law, see Am. Law. Rev. supra, p. 895, and the especial looseness of expression in that part of the Code which deals with Offenses and Quasi-Offenses, that a judge should in a case of first impression reflect the sentiments of his community. If it be granted that the judge was so guided when in *Vernon* v. *Bankston*, supra, he declared it to be the "jurisprudence" of the state that "one who is himself in fault" cannot recover damages for a resulting wrong even where the latter is not justified in law, it seems that the court in *Massett* v. *Keff*, supra, simply took one logical step forward in response to the sentiment of the community when it declared that an insult was such a "fault" as to prevent recovery. In this connection it is interesting to note the codification of "The Unwritten Law" by a Louisiana jurist in 36 N. Y. Law Journal No. 23; 68 Alb. L. J. 262.

LIMITATIONS ON THE DOCTRINE OF CONSTRUCTIVE ADVERSE POSSESSION.—The doctrine of constructive adverse possession is a purely American growth, due to native conditions. It does not obtain in England, because in that country all land is divided into known parcels, from which it results that a disseisor claims a known parcel. In America the general, though not the universal doctrine is, that possession of a part of a tract of land, under color of title, and with a claim of right to the whole tract, amounts to a possession of every part of the whole tract. *Hicks* v. *Coleman* (1864) 25 Cal. 122. The color of title, by which is generally meant a written instrument valid on its face, *Thompson* v. *Burbans* (1879) 79 N. Y. 93, 99, defines the extent of the possession claimed and it is presumed that the extent of paper title is as visible and notorious as actual possession. The theory of the general doctrine is, that in an undeveloped country it would be impossible to reduce to possession the whole of the land which the deed purports to convey; and just as the

true owner is deemed to be in possession of all the land through his deed, so the law will give to the adverse claimant constructive possession of all to which he has color of title. See *Fugate* v. *Pierce* (1872) 49 Mo. 441, 447.

But the general doctrine has been subjected to several important limitations. It has been held that where the premises are divided into known lots, actual use on one cannot carry with it constructive possession of the other. *Pepper* v. *O'Dowd* (1876) 39 Wis. 538, 550. Manifestly, where the lands are not contiguous there would be reason for this exception, since the two parcels cannot be called parts of any whole. But the courts apply the same exception where the lands are contiguous. *Thompson* v. *Burbans* (1874) 61 N. Y. 52; and this, too, whether the lands are conveyed by different deeds, *Hecklin* v. *McClear* (1889) 18 Ore. 126, or in the same deed, but not described as one plantation or tract. *Griffin* v. *Lea* (1892) 90 Ga. 224. The last case implies that both parcels must be included in the same description of the same deed. A good illustration of this rule is found in *Carson* v. *Burnett* (N. C. 1836) 1 Dev. & B. Law 546. In that case the deed described the land as "one tract consisting of two parcels," giving a description of each parcel. Ruffin, J. held, that this indicated that the plots passed as several and distinct parcels and that the possession of one was not a possession of the other. There are few cases to the contrary, but these seem to represent the more logical view. The mere fact that the several parcels of which the tract is composed are separately described, should not take the case out of the general doctrine. See *Webb* v. *Richardson* (1869) 42 Vt. 465. An analogous exception exists where the lands belong to different owners. But there is justification for this rule. By the strict common law there must be some actual ouster of the true owner, from which he could infer a claim adverse to his, the doctrine of constructive adverse possession merely defining the extent of the disseisor's claim. Where there is no actual disseisin there is no room for the doctrine of constructive possession. The courts, however, fail to observe this distinction. *Turner* v. *Stephenson* (1888) 72 Mich. 409, 412.

Where the true owner is in actual possession of any part of the land, there is no opportunity for the doctrine of constructive possession. Both parties cannot be seised at the same time of the same land under different titles. The law therefore adjudges the seisin of all that is not in the actual occupancy of the adverse party to him who has the better title. *Hunnecut* v. *Peyton* (1880) 102 U. S. 333. But see *Ware* v. *Bryant's Heirs* (Ky. 1893) 21 S. W. 873. A Virginia court has held that the subsequent entry of the true owner of the larger tract into possession of a part thereof outside the boundaries of the smaller tract claimed by the intruder, before the running of the limitation period, does not oust the intruder from adverse possession of the smaller tract. *Stull* v. *Rich etc. Co.* (1895) 92 Va. 253. This case cannot be supported. Constructive possession should follow the true title, in the case of mixed possessions, even if the true owner's actual occupancy is outside the portion claimed by the intruder, and subsequent to the entry of the latter. *Hull* v. *Woods* (Tex. 1894) 25 S. W. 458.

Limitations such as these, having to do with the area of land claimed,

may be worked out logically under accepted rules. But it seems impossible to explain on similar grounds the limitation recently applied in Alabama. *Lawrence* v. *Land Co.* (1906) 41 So. 612. In that case the defendant proved actual possession of a part under a deed granting a large tract. The court held that the doctrine of constructive adverse possession did not apply to large tracts of land not purchased for purposes of cultivation. This rule, first laid down by way of dictum in New York, *Jackson* v. *Woodruff* (1837) 1 Cow. 276, has been consistently followed in that and other states. *Chandler* v. *Spear* (1850) 22 Vt. 388; *Murphy* v. *Doyle* (1887) 37 Minn. 113. It limits the doctrine of constructive adverse possession to so much land as is reasonably necessary to the use and enjoyment of the parcel already reduced to possession, *Thompson* v. *Burhans*, supra, and refuses to extend the general doctrine to a plot of land not of proper size to be managed as a body. However much such a limitation is demanded as a matter of policy, it seems clear that it is in no way fitted for the application of the established rules of constructive adverse possession, and is scarcely to be considered as a legitimate outgrowth of that doctrine.

APPLICATION OF RULE FORBIDDING SPLITTING UP CAUSES OF ACTION TO INSTALLMENT CONTRACTS.—The generally accepted application of the rule that a single cause of action cannot be split up so as to make it the subject of several actions, results in peculiar situations in the case of installment contracts. *Baird* v. *United States* (1877) 96 U. S. 430. The difficulty is in determining whether the claims arising comprise a single cause of action with separate items of damage or several causes of action. *Secor* v. *Sturgis* (1858) 16 N. Y. 548; *Kerr* v. *Simmons* (1880) 9 Mo. App. 376; *Priest* v. *Deaver* (1886) 22 Mo. App. 276. Though the contrary is often stated, a recovery for breach of contract does not, ipso facto, bar a further recovery on the same contract. *Perry* v. *Dickerson* (1881) 85 N. Y. 345. The existence of several causes of action is generally recognized in contracts to pay money by installments. *Cooke* v. *Whorwood* (1671) 2 Saund. 337; *Union etc. Co.* v. *Traube* (1875) 59 Mo. 355; *Reformed etc. Church* v. *Brown* (1869) 54 Barb. 191; *Ryall* v. *Prince* (1886) 82 Ala. 264, as rent, *McDole* v. *McDole* (1883) 106 Ill. 452; *Kerr* v. *Simmons*, supra, interest on notes, *Sparhawk* v. *Wills* (Mass. 1856) 6 Gray 163, and employment installment contracts. *McEvoy* v. *Bock* (1887) 37 Minn. 402; *Alie* v. *Nadeau* (1889) 93 Me. 282. These holdings, permitting a recovery as each installment falls due, are correct on principle, being based on the true conception of an installment contract, namely, the different undertakings of the promisor. *Badger* v. *Titcomb* (Mass. 1834) 15 Pick. 409; vide: *Kerr* v. *Simmons*, supra; *Crouse* v. *Holman* (1862) 19 Ind. 30; cf. *Chinn* v. *Hamilton* (1841) 1 Hemp. 438. His obligation gives rise to successively arising causes of action simply because of the nature of the obligation he has assumed. *Kerr* v. *Simmons*, supra.

Certain jurisdictions entertaining this view, have followed it out logically by allowing several actions on installments already due. *Sparhawk* v. *Wills*, supra; *McDole* v. *McDole*, supra; *Dulaney* v. *Payne* (1882)